IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 728 OF 2005

Baban Sitaram Waydande ... Appellant

V/s

Shobha Baban Waydande ... Respondent

Mr. S.M. Kamble for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 18TH AUGUST, 2005

P.C.:

1. This is an appeal preferred by the appellant husband against the judgment and order passed by the Ad-hoc Addl. District Judge, Kolhapur dated 17.2.2005 allowing the appeal of wife and setting aside the order passed by the Trial Court in Hindu Marriage Petition No. 1 of 1999 setting aside the decree of divorce obtained by the appellant husband. The matter was also remanded to the Trial Court with direction to give sufficient and reasonable opportunity to the appellant-wife to adduce her evidence as well as of the respondent-husband, if so desire.

2. I have heard the learned counsel for the appellant-husband. He has brought to my notice the detailed reasons given by the Trial Court in paras 6 and 7 of his judgment showing that sufficient opportunity was given to the wife to adduce her evidence but she did not do so with apparent intention to delay the proceeding. The lower appellate Court Judge appears to have disagreed with the Trial Court while taking into account the facts and circumstances and gave direction to remand the matter to the Trial Court for giving sufficient opportunity to the wife to adduce her evidence.

3. After taking into account the relevant circumstance, I am inclined to hold that one more opportunity should be given to the wife to adduce evidence in support of her defence within a time bound programme and, therefore, necessary directions are being issued in that regard.

4. Hence, the appeal stands remanded to the Trial Court. However, it is hereby directed that the Trial Court, after remand of the matter, shall fix the time bound programme in order to complete the hearing of the

petition on merits after giving opportunity to both parties to lead their evidence, if any, within the time fixed by the Trial Court. If, however, the respondent wife is found to adhere to the delaying tactics in avoiding to lead evidence for one reason or the other, the Trial Court would be at liberty to proceed with the matter according to law in order to dispose of the petition as per law. The Trial Court shall complete the hearing of the petition within four months from the date of receipt of the writ of this Court after giving notices to both parties accordingly.

With these directions, the appeal stands disposed of. Consequently, the Civil Application No. 1176 of 2005 also stands disposed of. Office to take necessary steps to send the writ immediately.

.....